

Eric Kirkland SBN:151215
 eric@ekirklandlaw.com
 Kirkland Law
 555 W. 5th St., 35th Floor
 Los Angeles, California 90013
 O: (424) 265-7344
 F: (818) 217-8180

Attorney for Defendants

UNITED STATES DISTRICT COURT FOR
 THE CENTRAL DISTRICT OF CALIFORNIA

CHIARA SALOMONI, an individual

Plaintiff,

v.

ANGIE VENTURELLA, an individual;

LYNN VENTURELLA, an individual, and

DOES 1-10, inclusive,

Defendants.

Case No.: 2:17-cv-4017

**OPPOSITION TO ISSUANCE OF
 PRELIMINARY INJUNCTION,
 MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT
 THEREOF, DECLARATIONS OF ANGIE
 VENTURELLA, LYNN VENTURELLA,
 AND SUPPORTING EXHIBITS**

Date: July 17, 2017
Time: 10:00 a.m.
Courtroom: Courtroom 3d, 8th Floor
 350 W. First Street,
 Los Angeles, CA 90012

Judge: Hon. Christina A. Snyder

COME NOW Defendants Angie Venturella, an individual, and Lynn Venturella,
 an individual, in opposition to Plaintiff, Chiara Salomoni's motion requesting the
 Court to issue a preliminary injunction against Defendants:

MEMORANDUM OF POINTS AND AUTHORITIES

I. Legal Standard

Under the federal law, a movant seeking a preliminary injunction must demonstrate (1) a substantial likelihood of success on the merits, (2) a likelihood of irreparable harm in the absence of an injunction, (3) a balance of hardships favors the Plaintiff, and (4) an injunction would not disserve the public interest. *Winter v. Natural Resources Defense Council* (2008) 555 U.S. 7. Plaintiff misstates the holding of the *Winter* Court where the court expressly held that the Plaintiff must show a likelihood versus a possibility of irreparable harm regardless of the likelihood of prevailing on the merits. *Id.* at 17. The evidence below will show that Partnerships that Plaintiff was involved with do not own the intellectual property rights and that Plaintiff's probability of prevailing on the merits is highly remote.

II. Statement of Facts

This case arises out of a general partnership ("GP") and a separate joint venture partnership ("JV"). The GP was formed between three partners to publish a book that used pictures of people dressed in very elaborate mermaid costumes to promote awareness of protecting the ocean and its inhabitants. The three partners were Defendant Angie Venturella ("Angie"), Plaintiff Chiara Salomoni ("Plaintiff"), and Eric Ducharme ("ERIC"). Plaintiff and Defendant Angie were young entrepreneurs that were just finishing college that shared a passion for photography and ocean conservation.

The JV partnership was between Angie and the Plaintiff. The agreement was to co-promote each other's photography businesses. Both the GP and the JV used the intellectual property rights held by The Pinkerton Modeling Agency ("PMA") to the name "Project Mermaids" and to the URL projectmermaids.com ("IP") to promote the GP and JV by posting pictures of the photo shoots on the website

1 projectmermaids.com and the social media accounts using the name Project
2 Mermaids.

3 In approximately late 2012, Angie came up with the idea of creating awareness
4 of ocean conservation by taking pictures of celebrities dressed in mermaid costumes
5 and posting them to social media sites to promote a book that she would sell and
6 donate half of the net proceeds to the Charity Save Our Beach ("Charity"). Angelina
7 Decl. ¶¶4,5,6. In approximately May of 2013, Angie entered into an agreement with
8 PMA, a company owned by Angie's mother Defendant Lynn Venturella ("Lynn"),
9 in which PMA would secure agreements with Charity and ERIC to participate in
10 the book in exchange for the IP rights in the name Mermaid Project. Angelina
11 Decl. ¶5.

12 On June 27, 2013, Lynn contacted ERIC, the founder of Mertailor a company
13 which produced elaborate mermaid costumes. Lynn Decl. ¶5. The purpose of the
14 contact was to propose a partnership between ERIC and the Mermaid Project in
15 which ERIC would loan the costumes for celebrity photo shoots in which the
16 pictures would be used in a book about ocean conservation. Lynn Decl. ¶5 and
17 Angelina Decl. ¶5 The parties came to an agreement and signed a partnership
18 agreement on June 28, 2013 in which ANGIE and ERIC would split the net proceeds
19 from the sale of the book after a portion of the proceeds were donated to Charity.
20 See Lynn Decl. ¶5, Exhibit 1

21 On June 11, 2013, Lynn contacted Charity about participating in the book. After
22 much communication, on or about July 2, 2013, the Charity agreed to let Angie use
23 their name to promote the book in exchange for Charity receiving fifty percent
24 (50%) of the net proceeds from the sale of the book. Lynn Decl. ¶5

25 On June 29, 2013, Angie set up a personal Instagram account and began posting
26 pictures of celebrities in ERIC's mermaid costumes. Angelina Decl. ¶6. The first was

1 of Janel Parish in which Angie took pictures of Janel under and above water in a
2 mermaid costume. See Exhibit 2. She followed that with another photo shoot with
3 Vanessa Hudgens and Kim Hildogo on June 30, 2013, and posted those pictures on
4 Instagram. See Exhibit 3. She continued taking pictures of celebrities and models
5 and posting them on her Instagram account which started to attract a following. See
6 Exhibit 4.

7 Lynn wanted to acquire the URL mermaidproject.com, however, it was taken.
8 She decided instead to acquire the URL projectmermaids.com and on October 3,
9 2013, Lynn secured the URL projectmermaids.com under her business name The
10 Pinkerton Modeling Agency and on October 4, 2013, Angie set up an Instagram
11 account under the name Project Mermaids and posted some of the pictures from her
12 personal Instagram account on the same day. Exhibit 4,5, & 6 and Lynn Decl. ¶6. In
13 approximately September of 2013, Plaintiff contacted Angie and expressed interest
14 in supporting the cause. Angelina Decl. ¶7. On or around September 24, 2013, Lynn
15 orchestrated an agreement in which Plaintiff joined the book partnership between
16 ERIC and Angie as a "Contributing Photographer" in which she agreed to provide
17 photos for the book in exchange for a one-third ownership in the net proceeds of the
18 book. Exhibit 7 and Lynn Decl. ¶7.

19 Over the next seven (7) weeks Angie and Plaintiff began working on the book
20 project in earnest and discovered that they could use the Project Mermaid social
21 media accounts to promote their general partnership for the book, but they could
22 also promote their individual photography businesses. Angelina Decl. ¶8. On or
23 about November 14, 2013, Angie and Plaintiff entered into a joint venture
24 agreement and filed a fictitious business filing under the name Project Mermaids.
25 Angelina Decl. ¶9. Under the terms of the joint venture agreement, each party
26 would regularly post pictures to the Project Mermaid website and Instagram account

1 and they would also advertise their photography businesses through joint or
2 individual tours in which they would book photography shoots for paying
3 customers. Angelina Decl. ¶9.

4 Angie and Plaintiff would keep whatever money they made from their customers
5 less their travel cost and other expenses. Angelina Decl. ¶10. The nature of the JV
6 was each would have a separate business in which they would use the Project
7 Mermaid sites to promote it. Angelina Decl. ¶10. The customers would pay into a
8 common bank account before they would travel to do the photo shoot. Angelina
9 Decl. ¶10. The record keeping proved to be challenging for the young entrepreneurs
10 in that some prepaying customers would cancel their shoot and requests refunds and
11 the cost do to the tour was unknown until it was over which was typically many
12 months in the future. Angelina Decl. ¶10. Despite the bookkeeping complexity,
13 Angie and Plaintiff always acted consistently with that understanding during the
14 entire portion of the JV partnership. Angelina Decl. ¶10. There was never an
15 agreement in which they would split the proceeds of their photography businesses
16 based upon ownership percentages and it was always on the basis of what they
17 earned less their direct expenses. Angelina Decl. ¶10.

18 Relatively early on tension between Angie and Plaintiff started to arise due the
19 great disparity of original photographs being posted by Plaintiff to the Instagram
20 site versus the number being posted by Angie. Angelina Decl. ¶11. During the GP
21 and JV period, Angie posted 839 original photos to the sites and Plaintiff posted
22 277 original photos. Angelina Decl. ¶11.

23 As a way of addressing some of these issues and the mounting concern that
24 Plaintiff may not honor the GP agreement, the general partners entered into a written
25 agreement on February 11, 2016, to assuage the fears of Angie and Eric. Angelina
26 Decl. ¶12. The two primary concerns of Angie and Eric were that Plaintiff was not

1 providing the photos that she had taken for the purpose of promoting the book to
2 the GP in an electronic version that was suitable for publishing the book. Angelina
3 Decl. ¶12. There was also a concern that Plaintiff would use the GP's photos to start
4 and promote Plaintiff's own business that excluded the general partners Angie and
5 ERIC as well as violated the terms of the JV partnership. Angelina Decl. ¶12. The
6 agreement sought to make it clear that she was under the obligation to perform under
7 the GP and JV agreements and if she posted the pictures to a third party site she
8 would lose her interest in the partnerships. Angelina Decl. ¶12.

9 The agreement was not written by an attorney and had more of a declaration type
10 feel in which the Plaintiff, makes twenty one (21) separate declarations with five
11 (5) subparts that she will honor the GP and JV agreements. Exhibit 8. Obviously,
12 her partners had lost trust in Plaintiff and demanded unabiguous statements of her
13 intent to perform and that her failure would result in a the loss of her partnership
14 interest. More specficially, in paragraph 3 of the agreement it states:

15 *"I understand and agree that all the images shot on behalf of Project*
16 *Mermaids can only be used to promote the project or for the purpose of*
17 *the art show and book release."*

18 Section 5 expressly addresses the ownership of the photo taken with the mermaid
19 costumes that were provided by ERIC to the GP. Section 5 reads as follows:

20 *"I understand that I am submitting my images to be published under the*
21 *copyright of Project Mermaids and for the purpose of distributing and*
22 *selling a published book, either by a third party publisher or self-*
23 *published."*

24 Section 7 goes on to state:

25 *"Any images selected in the book and the art show may not be used for*
26 *personal sale or promotion."*

1 Section 8 addresses the JV partnership:

2 *"I agree that all images used for the purpose of promotion/press, not for*
 3 *the book, will be promoted via the Project Mermaids social media*
 4 *accounts and executed by a Social Media Coordinator."*

5 Section 10(a) directly addressed the consequences to the Plaintiff for her using the
 6 photos for a purpose other than the GP and JV. It reads as follows:

7 *"I agree that **I will be liable for loss of partnership or termination of***
 8 ***this contract** if I use a third party social media service or application."*

9 The very next statement that is conditioned upon the prior statement states:

10 *"I agree that all passwords of the social media accounts will be available to*
 11 *Angie Venturella, Chiara Salomoni, Edward Garcia, and Cristina Whalin."*

12 What is abundantly clear is that Plaintiff's GP partners and her JV partner were
 13 feed up with Plaintiff's unpredictability and for them to continue they wanted clear
 14 statements from the Plaintiff that she would live up to her agreements or she would
 15 lose her partnership. Angelina Decl. ¶12. Within a few months of signing that
 16 agreement, Plaintiff was in breach, usurping partnership opportunities and
 17 competing with both the GP and the JV without the knowledge of her partners
 18 Angelina Decl. ¶13. Lynn is a seasoned business person in the modeling world
 19 which gave her the wisdom to retain the IP rights to Project Mermaids in lieu of a
 20 partnership interest because her decades of experience with business people in their
 21 early 20s gave her insight that they often don't live up to their obligations. Lynn
 22 Decl.22. Plaintiff's actions are a case in point.

23 **ARGUMENT**

24 **III. Movant is Unlikely to Prevail on the Merits.**

25 **A. PLAINTIFF's Breach of the February 11, 2016 Agreement Terminates** 26 **Her Partnership Interests.**

1 Under the California Uniform Partnership Act of 1997, a general partnership is
2 created when partners, even orally, agree to work together in a common business
3 enterprise. In this case the Plaintiff entered into an oral agreement with Angie and
4 ERIC which was later defined her obligations under the written agreement on
5 February 11, 2016. Exhibit 8.

6 Paragraph 10(a) states the following: “I agree that I will be liable for loss of
7 partnership or termination of this contract if I use a third party social media service
8 or application.” *Id.* Plaintiff registered and obtained a domain name via
9 GoDaddy.com entitled “Mermaids for Change.” Angelina Decl.¶14. Plaintiff
10 breached the terms of the Agreement the moment she began posting photographs
11 intended for Project Mermaids on the social media Instagram account she created
12 called Mermaids for Change. Angelina Decl.¶14. On October 18, 2016, Plaintiff
13 made her first post on her Instagram account Mermaids for Change to promote her
14 competing business. Angelina Decl.¶14.

15 Plaintiff’s most egregious violation of the partnerships was a shoot in December
16 2016, that was planned in June of 2016, of Ashley, an actress that had volunteer to
17 do a photo shoot for Project Mermaids. Angelina Decl.¶15. Plaintiff shot still
18 photos and made a video utilizing ERIC’s mermaid costumes intended for the GP
19 and posted the photos and the video on Plaintiff’s competing Mermaids for Change
20 Instagram site on December 17, 2016. *See* Exhibit 9, 10.

21 In a similar situation, Plaintiff posted underwater photographs of a model named
22 Jade on her Mermaids for Change Instagram when Jade believed that the shoot was
23 for the benefit of Project Mermaids. Angelina Decl.¶16. Jade saw her photos posted
24 on Plaintiff’s Mermaids for Change Instagram account and was confused and
25 reached out to Angie for an explanation. Angelina Decl.¶16. *See* Exhibit 11. These
26 revelations that Plaintiff was competing covertly in 2016 have kept coming over the

1 last several months. See Exhibit 12. Angelina Decl.¶16. Plaintiff has clearly
 2 breached the February 11, 2016 agreement which resulted in the loss of her
 3 partnership interest. The likelihood of the Plaintiff prevailing on the merits are
 4 remote at best and far short of the burden required.

5 **B. Plaintiff Lacks Privity with the IP Holder.**

6 Lynn's company PMA is the owner of the IP rights to project mermaids and has
 7 granted a revocable license to Angie to use the name for the Project Mermaids
 8 Instagram account. Lynn Decl. ¶7 Although Lynn has assisted Plaintiff and Angie
 9 with their respective businesses, Lynn or PMA has never entered into an agreement
 10 with Plaintiff, nor does the Plaintiff allege they have. Without privity of contract,
 11 there is no obligation for Lynn or PMA to grant a license without consideration to
 12 Plaintiff to use the name to advertise Plaintiff's photography business. Lynn
 13 Decl.¶21. Lynn's business experience with young entrepreneurs guided her to
 14 protect her daughter by taking ownership of the IP in exchange for Lynn's assistance
 15 with putting the businesses together. Lynn Decl.¶22. A fact that Plaintiff does not
 16 like, but, nevertheless is true.

17 **C. PLAINTIFF Withdrew from the Partnership**

18 A dispute arose over Plaintiff's lack of participation in the JV over the last half
 19 of 2016. Angelina Decl.¶18. Plaintiff was unresponsive to Angie's numerous
 20 requests to talk about Plaintiff's lack of participation in the JV. Plaintiff's response
 21 was to withdraw from the JV. Lynn Decl.¶23, Exhibit 13. In an email dated January
 22 30, 2017, Plaintiff wrote to Lynn and said among other things:

23 *"Lynn, . . . , I hereby request that we retroactively dissolve me from the*
 24 *company. I believe that this is the best course of action . . ."*

25 Plaintiff's motion is bewildering in light of the facts above, but, nevertheless
 26 very clear that she relinquished her rights in the JV and GP. *Id.*

1 **IV. PLAINTIFF will not Suffer Irreparable**

2 Plaintiff began her competing business over a year ago on July 12, 2016,
 3 when she registered and obtained the domain name: Mermaids for Change and
 4 opened the competing Instagram account. Angelina Decl.¶¶16,17. Plaintiff's
 5 business has been active for over nine (9) months and has been built in part on the
 6 IP she converted from her partners. *Id.* Plaintiff has a full tour schedule through
 7 December 10, 2017 to shoot photographs for paying customers at the same rate that
 8 she did when she advertised on Project Mermaids. Exhibit 14. Plaintiff recently
 9 posted a photo from a shoot she did in Miami on her website and Instagram account.
 10 Exhibit 15. Plaintiff's future business looks fine.

11 Irreparable harm is also inconsistent with Plaintiff's January 30, 2017,
 12 withdrawal from the partnership. Defendants believe that Plaintiff is merely upset
 13 that she is not getting the support that Angie is receiving and that she didn't have
 14 the resources to defend herself from the lawsuit.

15 **V. Defendant will be Harmed more than Plaintiff if the Injunction is Granted**

16 Social media is much like any other content based advertising medium,
 17 whether it be TV, radio or podcasts over the internet. Angelina Decl.¶11. You
 18 provide the followers fresh content on a regular basis and they don't mind receiving
 19 some advertising from you. *Id.* Provide little original content and a lot of advertising
 20 and the followers will stop following. A basic concept that Plaintiff understands.

21 The primary dispute that arose in the last half of 2016 between Plaintiff and
 22 Angie was that Plaintiff started to dramatically reduce the content she was putting
 23 on Project Mermaids website and Instagram account, apparently to produce it for
 24 Plaintiff's competing business. Angelina Decl.¶18. Despite Plaintiff's consistent
 25 representations that she would confer with Angie before posting advertisements for
 26 her photography business on the Instagram account, Plaintiff continued to do it until

PMA and Angie decided to deny her access to the account. *Id.* During that time, Plaintiff only posted 31% of the original photos and at the same time posted 82% of all the advertising posted for Plaintiff's photography business. *Id.* Below are the posting of original content starting the on the 16th of each month until the 15th of the following month.

Plaintiff	May	June	July	August	Sept.	Oct.	
Photos	31	26	23	19	18	13	130
Adverts	12	13	11	11	12	8	67
Angie							
Photos	47	55	49	50	44	39	284
Adverts	3	3	2	4	0	2	14


Angie pleaded with Plaintiff to stop and she was either ignored, or Plaintiff refused to keep her word, a common theme with the Plaintiff. Angelina Decl. ¶19.

Angie will be harmed if Plaintiff is allowed to post advertisements for her competing business. Instagram has very strict rules that if they are violated, the account will be suspended and that will only benefit the Plaintiff. The risk is too severe for Angie.

CONCLUSION

Defendant's respectfully request that the Court deny Plaintiff's motion for preliminary injunctive relief.

Dated this 25th day of June, 2017

By: 
 Eric Kirkland SBN:151215
 Kirkland Law
 555 W. 5th St., 35th Floor
 Los Angeles, CA 90013
 (424) 265-7344
 Attorney for Defendants